IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 149 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODCHANDRA PRABHUDAS LOTIA

Versus

STATE OF GUAJRAT

Appearance:

1. Criminal Revision Application No. 149 of 2001

MR MJ BUDDHBHATTI for Petitioner No. 1

MR JM BUDDHBHATTI for Petitioner No. 1

MR SS PATEL Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/03/2002

ORAL JUDGEMENT

This revision application has been filed by the present petitioner-Ori. accused of Special Case No. 1/1992 pending in the Court of Special Judge, Rajkot. The

petitioner has been charged under section 7, 13(1)(D) and 13(2) of the Prevention of Corruption Act. Considering the papers of challan filed under sec. 173(2) of CrPC. The Special Judge has framed the charge which is at Annexure-A on 3.7.1997.

The say of the petitioner is that the authority granting sanction has not accorded the sanction for the offence punishable under sec. 7 and 13(1)(D) of the Prevention of Corruption Act. The sanction is only qua the offence punishable under sec. 13(2) of the said Act. So, it was not legal for the special judge to take congnizance of the offence punishable under sec. 7 and 13(1)(D). In view of the sanction granted by the authority under sec. 19(1) the ori. accused had prayed to alter the charge. After hearing the parties and especially ld. counsel for the petitioner - accused , the ld. Special Judge has dismissed the application vide order dated. 23.3.2001. This revision application is against the order of rejection of the application preferred by the present petitioner-ori. accused.

After having considered the contents of the application, charge framed by the trial court and the application preferred by the ori. accused before the Special Judge and the reasons of ld. Special Judge, rejecting the application, this Court is of the view that the order granting sanction is self explanatory and it covers all relevant aspects reflected in the paper of investigation and the substantive allegations made against the accused by the investigating agency.

Ld. APP Mr. Patel has placed reliance on the case of Kalpnath Rai vs. State (through CBI) reported in AIR 1998 SC p. 201 and has submitted that the ratio of the decision of the Apex Court goes to the root of the merits of the present revision application. In the cited case, there was no specific clear sanction for the offence punishable under sec. 3(4) and section 5 of the TADA. While dealing with the submissions advanced by the counsel in the cited case, the Apex Court has focussed on the real intention of the sanctioning authority and has observed that:

"That the sanctioning authority really intended to launch prosecution for the offence of illegal possession of arms is quite clear from the statements made in the order. True, the section for the offence (Section 5 of TADA) has not been specifically mentioned therein but that is of no serious consequence as long as the authority has

specified the facts and mentioned further that for the offence arising from such facts, sanction is accorded."

Without going into other details and the submissions made before this Court by learned counsel appearing for the parties, I do not find any merits in this revision application. There is no patent illegality or perversity in the order passed by the ld. Special Judge and, therefore, this revision application must fail.

However, it is observed that the point of the validity of the sanction has been raised at the earliest and before the formal commencement of trial (i.e. recording of evidence). It will be open for the petitioner to argue this very point i.e. validity of the sanction for the offence punishable under sec. 7 and 13(1)(D) of the Prevention of Corruption Act at the time of evaluating evidence and making submissions on merits. It is also important and relevant to observe that it will also be open for the investigating agency if it so desirous to place corrected or modified or afresh order of sanction to avoid technical dispute.

Reserving the liberty of both the parties as observed hereinabove, this revision application is rejected. Rule is discharged. Interim relief stands vacated. DS is permitted to Ld. APP.

(C.K. BUCH, J.)
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